



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Draft

Date Amended: **03/17/04**

Bill No: **SB 1168**

Tax: **Toxic Chemical Fee**

Author: **Ortiz**

Board Position:

Related Bills:

***This analysis will only address the bill's provisions that impact the Board.***

## **BILL SUMMARY**

This bill would impose a toxic chemical fee on manufacturers and other persons who directly produce any toxic chemical or any business or person who imports into the state or distributes within the state any toxic chemical, as specified.

### **Summary of Amendments**

The amendments gutted the introduced version of the bill to revise, in part, the imposition of the toxic chemical fee.

## **ANALYSIS**

### **Current Law**

#### ***Environmental Fee***

Under existing law, Section 25205.6 of the Health and Safety Code provides that corporations in industry groups that use, generate, store, or conduct activities in this state related to hazardous materials pay an annual fee to the Board. This environmental fee is based on the number of employees employed by a corporation in the state during the previous calendar year.

The annual fee is paid to the Board and deposited into the state's Toxic Substances Control Account.

#### ***Disposal Fee***

Under current law, Section 25174.1 of the Health and Safety Code requires each person who disposes of hazardous waste in this state to pay a disposal fee at a rate based on the type of waste disposed. Each operator of an authorized hazardous waste facility at which hazardous wastes are disposed is required to collect a disposal fee from any person submitting hazardous waste for disposal and transmit the fees to the Board for deposit into the Hazardous Waste Control Account in the General Fund.

#### ***Generator Fee***

Section 25205.5 of the Health and Safety Code requires every generator of hazardous waste to pay a fee for each generator site for each calendar year unless the generator has paid a facility fee or received a credit, as specified, for each specific site for the calendar year for which the generator fee is due.

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**Facility Fee**

Under existing law, Section 25205.2 of the Health and Safety Code provides that each operator of a facility shall pay a facility fee for each reporting period to the Board based on the size and type of the facility. Pursuant to Section 25205.4, the fee to be paid by a large offsite treatment facility for the 1998, 1999 and 2000 reporting periods is equal to 2.25 times the base facility rate. Beginning with the 2001 reporting period, the fee increased to equal three times the base facility rate.

The facility fee is paid to the Board and deposited into the Hazardous Waste Control Account in the General Fund.

**Proposed Law**

This bill would add Chapter 8 (commencing with Section 105440) to Part 5 of Division 103 of the Health and Safety Code, known as the Healthy Californians Biomonitoring Program.

Among other things, this bill would impose a toxic chemical fee to fully support the Healthy Californians Biomonitoring Program based on all of the following:

- Manufacturers and other persons who directly produce any toxic chemical, as defined.
- Any business or person who imports into the state or distributes within the state any toxic chemical, as defined.

The California Environmental Agency (CalEPA) would establish specific fees, by regulation, to be assessed on manufacturers, importers, and distributors. The amount of the fee would be capped by statute; however, that amount is not yet specified in the bill.

The fees would be assessed on the basis of a manufacturer's or person's present responsibility for environmental toxic chemical contamination, to the maximum extent practicable. No fee would be assessed upon any retailer products containing toxic chemicals or upon any manufacturer or person for the consequences of lead toxicity subject to the Childhood Lead Poisoning Prevention Act of 1991.

The annual fee assessment would be adjusted by the State Department of Health Services (DHS) and CalEPA to reflect both of the following:

- The increase in the annual average of the California Consumer Price Index, as recorded by the Department of Industrial Relations, for the most recent year available.
- The increase or decrease in the number of participants who are found to have exposure to toxic chemicals pursuant to this chapter.

The adoption, amendment, or repeal of a regulation for fee assessment and collection, including subsequent amendments or adjustments, would be exempted from the rulemaking provisions of the Administrative Procedure Act. However, upon adoption, the regulation would be required to be filed with the Secretary of State and printed in the California Code of Regulations.

This bill would prohibit any fee from being assessed upon a party if that party demonstrates to the agency's satisfaction, providing scientific, academic, and peer reviewed research, that the party merits an exemption because the party's conduct did not contribute in any manner to the toxic chemical contamination, or the toxic chemical does not currently result in quantifiably persistent human toxic chemical exposure.

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**COLLECTION OF THE TOXIC CHEMICAL FEE**

This bill would authorize the CalEPA to collect the toxic chemical fee or would authorize that agency to contract with the Board or another party for collection of the fees due.

This bill would also require the DHS to collect the toxic chemical fee or an entity that the DHS contracts with in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

**FISCAL PROVISIONS**

The fees would be deposited in the Healthy Californians Biomonitoring Fund (Fund), which this bill would establish in the State Treasury. Unless otherwise specified, moneys in the Fund would be continuously appropriated to the DHS for, and expended for, the purposes of the Healthy Californians Biomonitoring Program.

This bill would require that the fees collected and the earnings therefrom to be used solely for the purposes of biomonitoring, as provided. The DHS would not be allowed to collect fees in excess of the amount reasonably anticipated by the DHS to fully implement the Healthy Californians Biomonitoring Program. Also, the DHS would not be allowed to:

- Spend more than it collects from the fees and the earnings for implementation purposes including repayment of startup loans, or
- Collect more than ten million dollars (\$10,000,000) in fees, as adjusted.

This bill provides the Legislature's intent, in subsequent legislation, to appropriate and to deposit into the Fund, the sum of one million five hundred thousand dollars (\$1,500,000) from the General Fund to the Controller. Those moneys would be used for allocation as loans, to the DHS, for the purposes of adopting regulations to establish the fee schedule and startup costs related to implementing the provisions of this bill. It would also be the Legislature's intent that the DHS fully repay the amount of that loan with interest at the pooled money investment rate, from fees collected within that same fiscal year as appropriated so as to yield a revenue-neutral appropriation.

Costs associated with administration of the program could not exceed 15 percent of the entire amount deposited into the Fund in any fiscal year.

**Background**

In 2003, Senator Ortiz introduced SB 689, which would have implemented the Healthy Californians Biomonitoring Project. To fund the newly established Healthy Californians Biomonitoring Project, that bill would have imposed an additional excise tax on cigarettes of 0.05 mills (\$0.0005) per cigarette, or \$0.01 per package of 20, and imposed an equivalent compensating floor stock tax, operative January 1, 2004. However, that measure failed to pass its house of origin by the constitutional deadline.

**COMMENTS**

1. **Sponsor and purpose.** This bill is sponsored by The Breast Cancer Fund and Commonweal and is intended to provide a better understanding of the relationship between environmental toxins and the increasing incidence of disease. The sponsors contend that a better understanding of this relationship could potentially save the state substantial dollars each year in health care costs spent treating disease.

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2. **Summary of amendments.** The March 17, 2004, amendments gutted the introduced version of the bill to revise, in part, the imposition of the toxic chemical fee.

3. **The Board could not administer a new fee program with a January 1, 2005, effective date without risk to its Revenue Database Consolidation (RDC) Project.** Starting in April 2004 and running through the remainder of the 2004 calendar year, the Board will be implementing the RDC project. The RDC project involves extensive changes to the Integrated Revenue Information System (IRIS), the Board's primary tax administration system. The RDC project implementation and stabilization efforts will occupy significant Board staff resources for the rest of 2004.

In addition, the Board is currently in the process of developing, testing and implementing technology changes related to new legislatively mandated programs\*. This effort has been included in the multi-year, multi-phase RDC project and will be on going through the end of 2004.

Since this bill would create a new fee program as of January 1, 2005, programming to the Board's computer system would be required at the end of 2004, which is during the final stages of the RDC Project. Making any modifications at the end of the system development would put the Board's RDC project, including the programming for the new legislatively mandated programs, at substantial risk. Because of this risk, the Board can not add a new tax or fee program to its system until early 2005. It is therefore suggested that the bill be amended to make the fee operative no earlier than July 1, 2005, if it is anticipated that the DHS would contract with the Board for the collection of this fee.

4. **The Board would require the necessary funding to administer the toxic chemical fee.** In funding state agencies, the Administration and the Legislature have not provided budget dollars to support the actual agency payroll costs (for example, workers compensation costs, merit salary adjustments, and collective bargaining requirements are not fully funded in the annual budget process). The Administration and the Legislature expect state agencies to keep positions vacant or delay hiring staff in order to save dollars to meet these unfunded payroll costs.

To be able to promptly hire staff or to recruit from outside the Board's operations, the bill should be amended to provide funding to fully support the Board's actual costs of a position.

5. **Appropriation amount may need to be revised.** This bill states that it is the intent of the Legislature, in subsequent legislation, to appropriate \$1.5 million from the General Fund to the Controller for allocation as loans to the DHS for the purposes of adopting regulations to establish the fee schedule and startup costs related to implementing this measure. It also states that it is the intent of the Legislature that the DHS repay the amount of this loan with interest at the pooled money investment rate from fees collected.

The Board's administrative start-up costs, if the DHS were to contract with the Board to collect the proposed fees, are currently unknown. Once the administrative start-up costs are determined, the bill may need to be amended to reflect that amount in addition to the DHS's costs related to adopting regulations to establish the fee schedule.

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\* AB 71 (Cigarette and Tobacco Products Licensing Act) and SB 1701 (Alternative Cigarette and Tobacco Stamps)

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6. **Cost cap could be problematic.** This bill provides that the costs associated with administration of the program shall not exceed 15 percent of the entire amount deposited into the fund in any fiscal year.

The bill further provides that in no fiscal year shall the DHS collect more than ten million dollars (\$10,000,000) in fees, as specified.

Assuming that the 15 percent cap only applies to the collection and administration of the proposed fee and not to the entire Healthy Californians Biomonitoring Program, the most the DHS or other entity contracted to collect the fee could be reimbursed would be no more than \$1,500,000 annually. Since the Board has not yet estimated the implementation and administration costs, it is not known at this time if the cost cap would provide the Board with sufficient funding to administer the fee if the DHS were to contract with the Board for the collection of the fee.

In addition, it is suggested that the bill be amended to clarify to what the 15 percent cap applies. For example, does it apply to spending for the entire Healthy Californians Healthy Biomonitoring Program or only to the collection and administration of the proposed fee?

7. **Suggested amendments.** The following amendments are suggested to clarify the intent of the measure:

- The bill should be consistent with respect to who the fee is imposed upon. For example, Section 105451 states that any manufacturer or person who is responsible for either producing or distributing the chemicals shall pay the fees assessed. However, Section 105454 would impose a fee, in part, on any business or person who imports into the state or distributes within the state any toxic chemical.
- Referenced terms should be defined, such as “person”, “importer”, “manufacturer”, and “distributes”. Special consideration should be taken when defining “distributes” as to whether the fee would only apply upon the first distribution in this state, or each time the toxic chemical is distributed. The bill should also be amended to clarify how the fee would apply to products sold after being recycled or reclaimed.
- It does not appear that the proposed fee could be imposed upon chemicals later determined by the DHS to be toxic chemicals.

In its current form, the bill provides that the fee would be imposed on all of the following:

1. Manufacturers and other persons who directly produce any toxic chemical set forth in this chapter.
  2. Any business or person who imports into the state or distributes within the state any toxic chemical listed in this chapter.
- This bill should specify the annual due date for the fee. As discussed in Comment #3, the operative date should not be any earlier than July 1, 2005, if it is anticipated that the DHS would contract with the Board for the collection of the toxic chemical fee. As such, the initial due date should be after that date.
  - It should be clarified whether the feepayers would self report the amount of the fee due or receive a determination (a bill) for the amount of the fee.

- Section 105457(a) states that the proposed toxic chemical fee would be collected by the DHS or an entity that the DHS contracts with in accordance with the Hazardous Substances Tax Law (Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code). However, that conflicts with Section 105456(d), which states that the CalEPA may collect fees imposed or may contract with the Board or another party for collection of fees due.

Furthermore, the proposed fee should be collected in accordance with the Fee Collection Procedures Law rather than the Hazardous Substances Tax Law. The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to be collected by the Board to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as provides the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

- It is suggested that the bill be amended to authorize the payment of refunds for overpayment of the fees and specifically provide for reimbursement to the agency responsible for collecting the fee.
- It is not clear as to how the fee would apply to mixtures containing the listed chemicals. Would the fee apply only to the chemicals in their raw state? Or would the fee also apply to mixtures containing the listed chemicals? For example, many of the chemicals listed are combined with additives and then sold as a name brand product.

Board staff is available to work with the author's office in drafting appropriate amendments.

## **COST ESTIMATE**

A detailed cost estimate is pending. However, the Board would incur substantial costs related to this measure for notifying potential fee payers, developing returns, computer programming, developing and carrying out compliance and audit efforts to ensure proper reporting.

## **REVENUE ESTIMATE**

This measure does not specify the amount of the toxic chemical fee. Accordingly, a revenue estimate could not be prepared.

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